



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 10, 1998

Mr. Eric M. Bost
Commissioner
Texas Department of Human Services
P.O. Box 149030
Austin, Texas 78714-9030

OR98-1429

Dear Commissioner Bost:

You ask this office to reconsider our ruling in Open Records Letter No. 98-1037 (1998). Your request for reconsideration was assigned ID# 116882.

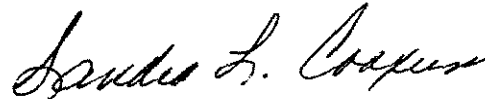
The Texas Department of Human Services (the "department") received a request for information pertaining to accidents resulting from tripping or falling into a hole located at 113-C Industrial in McKinney, Texas. In Open Records Letter No. 98-1037 (1998), this office concluded that the department could not withhold the requested information under section 552.103 of the Government Code. In your request for reconsideration, you assert your original arguments for withholding the information and also state that "while the department did not state that Mr. Elliott's December 1, 1998 letter is in compliance with the notice requirements of the Tort Claims Act, it is apparent from reading the letter that it is intended to describe a damage or injury claimed, the time and place of the incident and the incident as required in sec. 101.101, Civil Practice and Remedies Code." You further ask "whether, when asserting the litigation exception for reasonably anticipated tort claim litigation, an agency must affirmatively identify a notice that complies with sec. 101.101." Thus, you assert that the language in the notice of claim form makes the requisite compliance representation.

In Open Records Decision No. 638 (1996), we stated:

We believe that a governmental body's claim that litigation is anticipated based on its receipt of a letter from an allegedly injured party is sufficient to demonstrate that litigation is reasonably anticipated *if the governmental body's attorney represents to this office that the letter is in compliance with the notice requirements of the [Texas Tort Claims Act] or applicable ordinance. See Open Records Decision No. 416 (1984) at 6.*

Open Records Decision No. 638 (1996) at 4 (emphasis added). No such affirmative representation was made. Furthermore, we do not believe that the language in the notice of claim form makes the requisite compliance representation. Therefore, we decline to change our ruling in Open Records Letter No. 98-1037 (1998). If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in cursive script, reading "Sandra L. Coaxum".

Sandra L. Coaxum, C.P.A.
Chief, Open Records Division

SLC/rho

Ref.: ID# 116882

cc: Mr. Raymond J. Elliott
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